

# Nadler Assesses Congressional Continuity in the Event of a Devastating Attack

Thursday, 23 July 2009

WASHINGTON, D.C. – Today, Congressman Jerrold Nadler (NY-08), Chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, chaired a hearing entitled the “Continuity of Congress in the Wake of a Catastrophic Attack.” The hearing examined Congress’s readiness to address continuity following a devastating attack, and delved into possible ways to ensure the continued functioning of the legislative branch of government if such an attack caused the death or disability of a large number of Members of Congress.

“In the years since 9/11, the issue of congressional continuity has virtually dropped off the radar,” said Congressman Nadler. “While the Congress has taken some actions to prepare for such an eventuality, it is not clear that our work is finished. We need to know whether our current system is sufficient to ensure that necessary government functions continue in a manner that is both constitutional and effective. We cannot wait until a crisis occurs to find out whether we are adequately prepared for a catastrophe.”

“The unfortunate reality is that Congress is still vulnerable to attack, and yet we don’t have a Constitutional mechanism for replacing House members quickly,” said Congressman Brian Baird (D-WA). “I understand this isn’t a pleasant or easy topic to discuss, but we cannot continue to bury our heads in the sand and hope that we remain safe. We need to act now to ensure we have a way to reinstate our government quickly and effectively.”

“This issue is too important to leave to terrorists or chance,” said Congressman Dana Rohrabacher (R-CA). “We need to ensure that even if tragedy strikes, Congress is able to function and represent the people of our country.”

Testifying today were: Congressman Brian Baird (D-WA); Congressman Dana Rohrabacher (R-CA); John Fortier, Research Fellow, American Enterprise Institute; R. Eric Petersen, Analyst, Congressional Research Service; Harold Relyea, Former Analyst, Congressional Research Service; and, Professor Akhil Reed Amar, Yale Law School. Congressmembers Baird and Rohrabacher have each introduced legislation intended to address this issue.

On September 11, 2001, four commercial airliners were hijacked by terrorists who used them to attack important government and civilian targets. Both towers of the World Trade Center and the Pentagon were struck, resulting in the complete destruction of the World Trade Center and a dramatic loss of life. A fourth plane, United Flight 93, took off late, giving passengers the time to discover the fate of the other planes. The passengers stormed the cockpit and the plane crashed into a field in Pennsylvania. It appears that the fourth plane’s target was the U.S. Capitol. Had it left on time, and had the terrorists been able to reach their target, it almost certainly would have resulted in widespread loss of life.

The incident highlighted a significant vulnerability of our representative government. Without a duly constituted legislature, the government may not be able to respond to the crisis in a manner consistent with the Constitution, and its actions could possibly be seen as illegitimate. Today's hearing looked into the problem of ensuring that the government could continue to operate, and that the elected branches of government could be reconstituted in a timely and orderly manner.

The following is the text of Nadler's opening statement:

"Today's hearing deals with a very important problem: the continuity of the Congress in the event of a catastrophic attack.

"In the years since 9/11, this issue has virtually dropped off the radar. While the Congress has taken some actions to prepare for such an eventuality, it is not clear that our work is finished. I hope to hear from today's witnesses about some of these important issues.

"Most importantly, we need to know whether our current system is sufficient to ensure that necessary government functions continue in a manner that is both constitutional and effective. We cannot wait until a crisis to find out whether we are adequately prepared for a catastrophe.

"I am very concerned that, however we choose to respond, the American people will have confidence in the new Congress, and view its actions as legitimate. Congress has important and exclusive functions under the Constitution, and we must guarantee that those functions remain vital in a national emergency.

"I am especially concerned that a House of Representatives well short of a majority of its 435 seats might wield the war power or the power of the purse. The damage to our institutions from a rump Congress declaring war would be incalculable.

"Nonetheless, we must weigh the dangers of a substantially diminished Congress against the danger of a President exercising unchecked power in the absence of a Congress. The nation runs the risk in a national crisis of those proportions of turning toward dictatorship. If the person who controls the most divisions gets to run the show, then the attack will have been successful in a way that we cannot accept.

"Similarly, it is not clear how we can deal with the problem of determining, when members are incapacitated, who should make that decision, how to respond, and how and when to determine that the incapacity is over. It is not entirely clear that the current House rules deal with this issue in a manner consistent with the Constitution.

&ldquo;It is my fervent hope that the circumstances necessitating these extraordinary actions will never come to pass. No one wants to have to contemplate that eventuality, but we cannot responsibly fail to deal with the possibility. The nation would be ill-served, and the future of our successful system of constitutional democracy could be imperiled.

&ldquo;I thank the witnesses, and I look forward to your testimony.&rdquo;